

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

ISIDRO ALCANTARA-MONTIEL,
DOLORES GARCIA-NAJERA, HECTOR
HERNANDEZ-HERNANDEZ, SALVADOR
RUBIO-RUBIO, VICTOR VALDEZ-
MARTINEZ,

CIVIL ACTION NO. NO.7:11-cv-58-HL

Plaintiffs, and

GELACIO ALLENDE-MARTINEZ,
GUSTAVO MARTIN ALVAREZ-CHAIRES,
GERMAN BALTAZAR-LOPEZ ERNESTO
CASTILLO-COVA, BACILIO ESCAMILLA-
HERNANDEZ ALFREDO ADRIAN GARCIA-
SIMENTAL, ALEJANDRO HERNANDEZ-
MARCELO, JOSE ALEJANDRO LOZANO-
FAVELA, RICARDO GONZALEZ-
MENDOZA, ROQUE GONZALEZ-TREJO,
HOMERO LOYA-BLANCO, HECTOR
MANUEL MARTINEZ-GOMEZ, GIL
MENDOZA-CHAVEZ, JULIO SERVIN-
CARRERAS, MACARIO SERVIN-TORRES,
ARMANDO RUBIO-RUBIO, ANTONIO
TORRES-CLAVIJO, AND PEDRO VALDEZ-
MARTINEZ,

Opt-In Plaintiffs,

v.

R & H FARMS, INC., RANDY H. HIERS, SR.,
and NORADINO RODRIGUEZ,

Defendants.

**PLAINTIFFS AND DEFENDANTS RANDY H. HIERS, SR., AND
R & H FARMS, INC.'S MOTION FOR ENTRY OF CONSENT ORDER
AND FLSA FAIRNESS DETERMINATION**

Plaintiffs and Opt-In Plaintiffs and Defendants Randy H. Hiers, Sr., and R & H Farms,

Inc. (“Hiers Defendants”) have reached an agreement to resolve this lawsuit, as reflected in the proposed consent judgment attached as Exhibit A. Pursuant to *Lynn’s Food Stores, Inc. v. United States*, 679 F.2d 1350 (11th Cir. 1982), the parties request a fairness determination as to Count I, approval of their settlement, and entry of the attached consent order. *Id.* at 1353 (“When employees bring a private action for back wages under the FLSA, and present to the district court a proposed settlement, the district court may enter a stipulated judgment after scrutinizing the settlement for fairness.”).¹

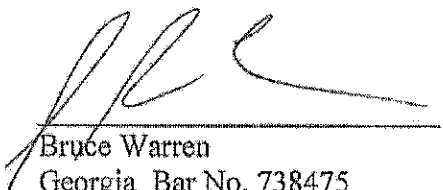
A FLSA fairness determination is appropriate here, where both parties are represented by counsel who have engaged in arm’s-length negotiations. *Id.* at 1354; *Stahl v. MASTEC, Inc.*, 2008 U.S. Dist. LEXIS 33858, at *8 (M.D. Fla. Apr. 23, 2008) (considering, *inter alia*, arm’s-length negotiations). The parties have evaluated the expense and risk associated with continuing litigation, and have determined that the settlement terms reflected in the proposed consent judgment are in their best interest. *Stahl*, 2008 U.S. Dist. LEXIS 33858, at *8.

The settlement amount of \$25,000 provides \$24,000 to Plaintiffs and Opt-In Plaintiffs, which represents 41% of their lost wages and liquidated damages. While this recovery percentage is lower than percentages frequently approved by courts, Plaintiffs and Opt-In Plaintiffs believe this settlement represents a fair compromise of their FLSA claims given the Hiers Defendants’ financial status the parties’ dispute over Defendant Randy H. Hiers, Sr.’s, status as an employer under the FLSA and the liability of the Hiers Defendants for recruitment fees paid by certain Plaintiffs and Opt-In Plaintiffs. Defendant Randy H. Hiers, Sr., is in personal bankruptcy, and

¹ In addition to their claims under the Fair Labor Standards Act, Plaintiffs and Opt-In Plaintiffs also assert claims for breach of the H-2A employment contracts and for conversion. Doc. 16 (Counts II and III). This settlement also

Defendant R & H Farms, Inc. has no assets and is no longer functioning as a going concern.² See Docs. 1 (Voluntary Petition), 95 (Amended Plan), and 109 (Order Confirming Plan) in *In re Randy H. Hiers, Sr.*, Bankruptcy Case No. 11-70517 (JTL) (M.D.Ga. Bankr.). The Hiers Defendants have agreed that the entire settlement amount is nondischargeable in bankruptcy and have agreed to a payment plan. Ex. A at ¶¶ 5-6. Plaintiffs and Opt-In Plaintiffs believe these guarantees adequately compensate them for compromising the value of their claims, given the financial status of the Hiers Defendants and Apart from the amounts discussed above, the settlement provides an additional \$1,000 for attorneys' fees and costs to be retained by Plaintiffs' counsel.

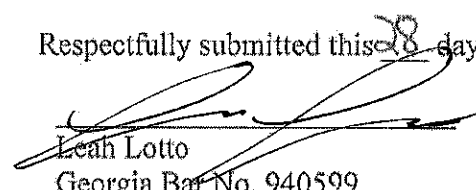
The parties' settlement of the FLSA claims contained in Count I "represents a reasonable compromise of disputed issues." *Lynn's Food Stores*, 679 F.2d at 1353-54. Accordingly, the parties request that the Court approve the fairness of this settlement and enter the attached proposed Consent Judgment approving their settlement.



Bruce Warren
Georgia Bar No. 738475
Whitehurst, Blackburn & Warren
809 South Broad Street
Thomasville, Georgia 31792
T: 229.226.2161
F: 229.226.9014

Attorney for Defendant Randy H.
Hiers, Sr., and R & H Farm, Inc.

Respectfully submitted this 28 day of Aug, 2012,



Leah Lotto
Georgia Bar No. 940599
Georgia Legal Services Program, Inc.
104 Marietta Street, Suite 250
Atlanta, GA 30303-2706
Tel.: 404-463-1633
Fax: 404-463-1623

Attorney for Plaintiffs

resolves those claims.

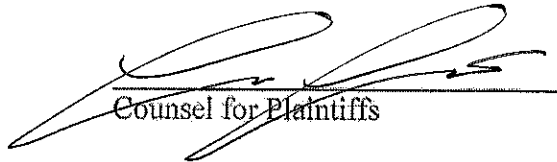
² The bankruptcy court lifted the automatic stay against Defendant Randy H. Hiers, Sr., to allow this action to continue. Docs. 14-2 and 15.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 28 day of August, 2012, electronically filed with the Clerk of the Court the foregoing PLAINTIFFS AND DEFENDANTS RANDY H. HIERS, SR., AND R & H FARMS, INC.'S MOTION FOR ENTRY OF CONSENT ORDER AND FLSA FAIRNESS DETERMINATION. The Court using the CM/ECF system will send notification of such filing to the following:

Bruce Warren
Whitehurst, Blackburn & Warren
809 South Broad Street
Thomasville, Georgia 31792
T: 229.226.2161
F: 229.226.9014
bwarren@wbwk.com

Counsel for Defendant Randy H. Hiers, Sr., and R & H Farms, Inc.


Counsel for Plaintiffs